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Black's Railroad Transit Service and Candice L. Bowles. Case 33–CA–13903–1

April 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

This case is before the Board on the General Counsel's "Motion for Summary Judgment".¹ The General Counsel alleges that Black's Railroad Transit Service (the Respondent) failed to timely answer a complaint alleging that the Respondent violated Section 8(a)(3) and (1) and Section 8(a)(4) of the Act by terminating Candice L. Bowles because of her union activities and because she filed an unfair labor practice charge.² In its response to the Board's Notice to Show Cause, the Respondent asserts that it terminated Bowles solely because she engaged in unsafe personal activities while on the job. The Respondent also attached numerous documents to its response, including correspondence with the Regional Office about the charge and complaint. The issues before the Board are: (1) whether the Respondent submitted evidence establishing that it filed a timely answer to the complaint; and, if not (2) whether the Respondent proffered reasons for its failure to file a timely answer that constituted good cause under Section 102.20 of the Board's Rules and Regulations. For the reasons set forth below, we find that the evidence does not establish that a timely answer was filed. We also find that good cause

¹ The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a Motion for Default Judgment.

² The chronology of events preceding this Decision and Order are as follows: A charge and amended charge were filed by Candice L. Bowles on January 31, 2002, and March 27, 2002, respectively. The Regional Director for Region 33 of the National Labor Relations Board issued a complaint on March 28, 2002 against the Respondent. By letter dated March 29, 2002, the General Counsel notified the Respondent that an answer must be received within 14 days from the date of the complaint and that if no answer were received, the General Counsel intended to file a Motion for Default Judgment. On April 22, 2002, the General Counsel filed a Motion for Default Judgment with the Board alleging that the Respondent failed to file a timely answer. On April 24, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion for Default Judgment should not be granted. On May 9, 2002, the Respondent filed a response to the Notice to Show Cause opposing the General Counsel's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

has not been established for the failure to file a timely answer. Accordingly, we grant the General Counsel's Motion for Default Judgment.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Judgment reveal that the Region notified the Respondent by letter dated March 29, 2002,³ that an answer must be received within 14 days from the date of the complaint and that, if no answer were received, the General Counsel intended to file a Motion for Default Judgment.

In its response to the Board's Notice to Show Cause, the Respondent's president, Richard L. Black, denies that his decision to terminate Bowles was connected to her union activity. The Respondent does not assert that it filed a timely answer with the Region, nor does it give any reason for its failure to file an answer.

The Respondent is not represented by counsel in this proceeding. In determining whether to grant a Motion for Default Summary Judgment on the basis of a respondent's failure to file a timely answer, the Board has, as a general matter, shown leniency to respondents proceeding pro se. *Kenco Electric & Signs*, 325 NLRB 1118 (1998). Thus, "the Board will generally not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer which can reasonably be construed as denying the substance of the complaint allegations." *Id.* (citing *Harborview Electric Construction Co.*, 315 NLRB 301 (1994)).

Under this standard, we conclude that the Respondent has failed to submit sufficient evidence establishing that it filed a timely answer. Of the numerous documents the Respondent attached to its response to the Notice to Show Cause, only one written by the Respondent is dated after the issuance of the complaint.⁴ It is a letter dated April 10 from President Black to the Regional Office stating that Black decided to terminate Bowles because she was attending to personal activities while on duty and had unsafe items stored in the vehicle assigned to her. A facsimile cover sheet dated April 10 is stapled to

³ All dates refer to 2002.

⁴ The Regional Director set a 14-day deadline for the Respondent to file a timely answer. Accordingly, an answer was due from the Respondent on or before April 11, 2002.

the letter. Neither the April 10 letter nor the facsimile cover sheet contain any authenticating marks or other identification that would establish that the letter was sent to the Region. Moreover, the General Counsel makes no reference to having received any documents in response to the complaint. Nothing in the record otherwise indicates that an answer was sent to, or received by, the Regional Office. Thus, there is insufficient evidence to show that the April 10 letter was filed.

Our decision to grant default summary judgment against the Respondent is further supported by a Board decision involving the Respondent, indicating that the Respondent previously has been exposed to the Board's default summary judgment procedures. In *Black's Railroad Transit Service*, 334 NLRB 325 (2001), which involved the same charging party, the Respondent acting pro se failed to file an answer to the complaint. Citing the relevant Rules and Regulations to the Respondent, the Board granted the General Counsel's motion for default judgment on the ground that the various documents submitted by the Respondent did not explain why the Respondent failed to file an answer. Thus, the Respondent has directly experienced the consequences of failing to follow the Board's Rules and Regulations regarding answering complaints. Yet it again has not followed those Rules and Regulations.

Nor has the Respondent proffered reasons for its failure to file a timely answer that would constitute good cause under the Board's Rules and Regulations. As noted earlier, the Respondent is acting pro se, and the Board has shown some leniency toward respondents who proceed without benefit of counsel. However, cases showing leniency "generally involve respondents that have . . . offered as good cause an explanation other than simply their pro se status." *Calyer Architectural Woodworking Corp.*, 338 NLRB No. 33, slip op. at 1-2 (2002). Accordingly, we find that the Respondent's pro se status alone is insufficient to constitute good cause.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation, with an office and place of business in Galesburg, Illinois, has been engaged in business as a transportation service.

During the 12-month period ending December 31, 2001, the Respondent, in conducting its business opera-

tions, performed services in excess of \$50,000 in states other than the State of Illinois.

During the same period, the Respondent, in conducting its business operations, purchased and received at its Galesburg, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Teamsters, Chauffeurs & Helpers, Local Union No. 627, International Brotherhood of Teamsters (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Richard Black held the position of Respondent's owner and president, and is a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act. At all material times, Glenda Black was the sister of Richard Black and is a supervisor within the meaning of Section 2(11) of the Act and/or an agent of the Respondent within the meaning of Section 2(13) of the Act.

About January 23, 2002, the Respondent terminated employee Candice L. Bowles because Bowles joined the Union and engaged in concerted activities, and to discourage employees from engaging in these activities. The Respondent also terminated Bowles because she filed unfair labor practice charges with the National Labor Relations Board and participated in National Labor Relations Board investigations and proceedings.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees. By the same conduct, the Respondent has discriminated against employees for filing charges or giving testimony under the Act. The Respondent thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1), Section 8(a)(4) and (1), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) and Section 8(a)(4) and (1) by terminating Candice L. Bowles, we shall order the Respondent to offer her immediate reinstatement to her previous position or, if that job no longer exists, to a substantially equivalent position, and to make her whole for any loss of earnings

and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful termination, and to notify Bowles in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Black's Railroad Transit Service, Inc., Galesburg, Illinois, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Terminating its employees because they join the Union or engage in protected concerted activities.

(b) Terminating its employees because they filed unfair labor practice charges with the National Labor Relations Board and participated in Board investigations and proceedings.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Candice Bowles, full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Candice Bowles whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful termination of Candice Bowles and within 3 days thereafter notify her in writing that this has been done and that the termination will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Galesburg, Illinois, copies of the attached

notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 23, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 30, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT terminate employees because they join the Union or engage in protected concerted activities.

WE WILL NOT terminate employees because they file unfair labor practice charges with the National Labor Relations Board or participate in Board investigations or proceedings.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Candice Bowles full reinstatement to her

former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Candice Bowles whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful termination of Candice Bowles, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the termination will not be used against her in any way.

BLACK'S RAILROAD TRANSIT SERVICE